

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE WAVE STUDIO, LLC,

Plaintiff,

v.

GENERAL HOTEL MANAGEMENT,
LTD.

et al.,

Defendants.

Case No.: 13-cv-09239 (CS) (PED)

**DECLARATION OF ABIGAIL J.
REMORE IN FURTHER SUPPORT OF
GENERAL HOTEL MANAGEMENT,
LTD'S MOTION FOR SUMMARY
JUDGMENT AND IN OPPOSITION TO
PLAINTIFF THE WAVE STUDIO, LLC'S
CROSS MOTION FOR SUMMARY
JUDGMENT**

ABIGAIL J. REMORE, of full age, hereby declares as follows:

1. I am an attorney at law, licensed to practice in the State of New York and this Court, and an associate with the law firm of Chiesa Shahinian & Giantomaso PC, attorneys for defendant General Hotel Management, Ltd. ("GHM"). I submit this Declaration in further support of GHM's Motion for Summary Judgment and in opposition to Plaintiff The Wave Studio, LLC's ("Plaintiff") Cross-Motion for Summary Judgment.

2. Unless otherwise qualified, I have personal knowledge of the facts set forth in this Declaration.

3. Filed concurrently with this Declaration is the declaration of Dr. Stanley Lai, SC dated April 13, 2016.

4. Attached hereto as Exhibit 1 is a true and correct copy of relevant pages of the court reporter's transcript of the Deposition of Lee Kar Yin, Plaintiff's principal, that took place May 21, 2015, along with the complete index to said transcript.

5. Attached hereto as Exhibit 2 is a true and correct copy of relevant pages of the court reporter's transcript of the Continued Deposition of Lee Kar Yin, Plaintiff's principal, that took place on September 9, 2015, along with the complete index to said transcript.

6. Attached hereto as Exhibit 3 is a true and correct copy of relevant pages of the court reporter's transcript of the deposition of Ralf Ohletz Graf von Plettenberg that took place on September 23, 2015.

7. Attached hereto as Exhibit 4 is a true and correct copy of a document produced by GHM to Plaintiff, Bates Numbered GHM00596, which is a production estimate for "GHM website design."

8. Attached hereto as Exhibit 5 is a true and correct copy of a document produced by Plaintiff to GHM, Bates Numbered TWS0355367, which is a quotation for "Photo shooting for GHM hotels in Bali."

9. Attached hereto as Exhibit 6 is a true and correct copy of a document produced by Plaintiff to GHM, Bates Numbered TWS0355708, which is a quotation for "Photo shot[sic] for The Setai Miami."

10. Attached hereto as Exhibit 7 is a true and correct copy of a document produced by Plaintiff to GHM, Bates Numbered TWS0355828-TWS0355834, which includes documents titled "Confirmation of Assignment of Copyright" and "Memorandum of Understanding and Ownership."

11. Attached hereto as Exhibit 8 is a true and correct copy of the Amended Answer and Affirmative Defenses of General Hotel Management, Ltd., filed with the Court on July 3, 2014.

12. Attached hereto as Exhibit 9 is the complete court reporter's transcript of proceedings before Hon. Cathy Seibel on August 19, 2015, in Case Nos. 13-cv-09239 and 15-cv-03420.

13. Attached hereto as Exhibit 10 is a true and correct copy of a letter dated February 18, 2016 from Howard J. Schwartz to Cameron S. Reuber.

14. Attached hereto as Exhibit 11 is a true and correct copy of email correspondence dated April 20, 2015 from Howard J. Schwartz to vijay@cobaltlaw.com.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 14, 2016

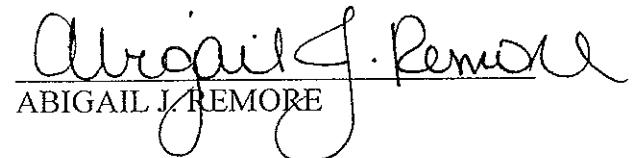

ABIGAIL J. REMORE

Exhibit 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3 Civil Action No. 7:13-cv-09239
4 THE WAVE STUDIOS, LLC,
5 Plaintiffs,

6
7 vs.

8 GENERAL HOTEL MANAGEMENT LTD.,
9 et al.,
10 Defendants.

11 - - - - -
12
13 TRANSCRIPT of the videotaped deposition of
14 LEE KAR YIN in the above-entitled matter as taken by
15 and before RUTHANNE UNGERLEIDER, a Certified Court
16 Reporter and Notary Public, held at the office of
17 CLAUSEN MILLER, P.C., 28 Liberty Street, New York,
18 New York, on Thursday, May 21, 2015, commencing at
19 approximately 10:15 in the forenoon.

20
21
22
23
24

25 Job No. NJ2071258

1 A P P E A R A N C E S:

2
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4 918 Parker Street, Bldg. A21
5 Berkeley, California 94710
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7 Attorneys for Plaintiff

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11 BY: HOWARD J. SCHWARTZ, ESQ.
12 ABIGAIL J. REMORE, ESQ.
13 Attorneys for Defendant General Hotel Management
14 Ltd.

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16 28 Libert Street, 39th Floor
17 New York, New York 10005
18 BY: MATTHEW J. VANDUSEN, ESQ.
19 Attorneys for Defendants, About.com, Alliance
20 Reservation Network d/b/a Reservetravel.com, Bookit,
21 Expedia, Fareportal d/b/a Cheapair.com, Farebuzz,
22 Frommer, Getaroom, Hotels.com, Hotelsbyme,
23 Hotelplanner, Insanelycheapflights.com, JetBlue,
24 Kayak, Lonely Planet, Metro travel Guide, Metro
25 Travel Guide, Netadvantage, Partner Fusion, Inc.,
Reservation Counter d/b/a reservation counter.com,
Pegasus, Random House d/b/a Fodors.com, This Exit,
LLC-Roadside America, Travelocity, Tripadvisor,
United Airlines, Gogobot, Inc. d/b/a gogobot.com,
Qantas Airways, Ltd., WK Travel, Inc., VFM Leonardo,
Inc.

AKIN GUMP, LLP
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BY: CAROLYN C. MATTUS, ESQ.
Attorneys for non-party American Express

ALSO PRESENT:
JONATHAN POPHAM, Videographer

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LEE KAR YIN PAGE
By: Mr. Schwartz 5

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1 A It was all transferred to me as a
2 director.

3 Q So Wave Pte., Ltd.'s assets all went to
4 you personally?

5 A Yes.

6 Q Okay.

7 Is there a document that shows that?

8 A Yes.

9 Company resolution, which Mr. Chua Kiat
10 Hong also signed.

11 Q I don't believe we have that.

12 MS. REMORE: We have it.

13 MR. SCHWARTZ: We do have it, okay.

14 Q And then Wave Design, Pte., Ltd., who
15 were the employees of that company?

16 A Same, Mr. -- Ms. Gwee Wei Wei, Goh Wai
17 Ying.

18 Q How do you spell that?

19 A G-O-H W-A-I Y-I-N-G.

20 Q Okay.

21 A Mr. Lim See, L-I-M S-E-E, K-O-N-G.

22 Q Okay.

23 So at a certain point, you formed
24 Wave -- The Wave Studio, LLC?

25 A LLC, that's in New York, yes.

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1 Q In New York.

2 And why did you do that?

3 A The Wave Studio, LLC was formed because
4 United States -- the justice system in United States
5 of America is one of the best to protect the creative
6 works of Wave, and naturally I want all creative
7 works of The Wave --

8 Q I'm sorry, I couldn't understand.

9 A Naturally, I want Wave's work to be
10 protected and respected.

11 Q So you -- you chose the United States --
12 you chose to try to protect, in your view, the rights
13 of your companies, and you came to the United States
14 specifically for that purpose?

15 A Yes, because --

16 MR. TOKE: Hold on. Objection.

17 MR. SCHWARTZ: No, she was answering.

18 You want to state an objection, state an
19 objection.

20 MR. TOKE: Yes.

21 MR. SCHWARTZ: Why don't you wait to let
22 her finish first?

23 MR. TOKE: That's fine.

24 Go ahead and answer your question, and
25 then I'll interpose an objection. So remember that,

1 just wait, give me an opportunity to object before
2 you answer, but in this instance, go ahead and answer
3 the question and I will interpose my objection in a
4 moment.

5 Q I was saying that you chose to come to
6 the United States, and New York specifically, to take
7 advantage of the laws?

8 A Not take advantage, but it has the best
9 system, where every single work has a name. They're
10 recognized individually.

11 Q And when did you become aware, in your
12 mind, that the United States law was, I think you
13 used the word "the most protective." Is that what
14 you were trying to say?

15 MR. TOKE: Objection to the extent that
16 it calls for attorney-client privilege, but go ahead
17 and answer.

18 MR. SCHWARTZ: Okay.

19 Q Do you remember the question?

20 Could you read the question back?

21 (Whereupon, the requested portion is
22 read back by the reporter.)

23 A How do I say it is the best system?
24 Is one of the best system in the world
25 where the infrastructure, the legal system, protects

1 the work of the -- the creative work of artists and
2 it protects minorities.

3 Q Okay.

4 And when did you form that view?

5 A Well, over time, I started reading.
6 It's just like when Wave was a sole proprietor, the
7 advice was to go into private limited because it has
8 matured, you know, like progression of things, as you
9 grow, and I started reading and was, like, "Okay,
10 I've got all this creative works. Wave has got all
11 this creative works. Where would be the best place
12 for them to be protected? Where would they be
13 respected?"

14 If I may use this term, they're my
15 babies.

16 Q And I very much appreciate that's your
17 baby, and I understand that completely.

18 So you began -- as you sit here today,
19 and I know you're not a lawyer, so I'm just asking
20 for your own personal opinion. In what way does the
21 United States, in your opinion, does United States
22 law protect your babies better than Singapore
23 copyright law?

24 A I checked and read and read Intellectual
25 Property Office of Singapore website. They had

1 Q Okay, okay.

2 Okay, so let me show you --

3 MR. SCHWARTZ: Let me have this one
4 marked.

5 (Whereupon Document Bates-stamped
6 TWS199380 through 383 is received and marked as
7 Exhibit 5 for identification.)

8 Q Okay, I've handed you a document that
9 we've marked Exhibit 5. Why don't you take a look at
10 it.

11 A Can you tell me what this is?

12 Q Assignment of copyright.

13 A It's supposed to be for what you call
14 nunc pro tunc.

15 Q Nunc pro tunc?

16 A Nunc pro tunc.

17 Q And what is your understanding of what
18 that means?

19 A I was told it means now for then.

20 Q Okay.

21 A So explain to me, why was this document
22 created --

23 A Oh --

24 Q -- then for now or now for then?

25 A Because I told Mr. Jennison, The Wave

1 Private, Limited was struck off in 2008 -- 2008, is
2 it? That means we need to do a nunc pro tunc. So we
3 did this. And subsequently I told him, Mr. Jennison,
4 all the properties for companies that --

5 MR. TOKE: I do not want you talking
6 about what you told counsel that's attorney-client
7 privilege.

8 Q Do you want to tell me what you said to
9 him?

10 A No.

11 Q Okay.

12 So explain to me the purpose of this
13 document.

14 A Now for then.

15 Q Well, why did you prepare this now for
16 then? What was the purpose of creating this
17 document?

18 A Because I told him The Wave Private,
19 Limited was struck off.

20 Q So what was your intention in preparing
21 this document?

22 A I didn't prepare it, Mr. Jennison did.

23 Q What was your intention in signing this
24 document?

25 A So that the copyright would be

1 | recognized.

2 Q So did you backdate this, is that what
3 you mean by "now for then"?

4 MR. TOKE: Objection, misstates the
5 testimony.

6 MR. SCHWARTZ: I didn't -- I asked her a
7 question, I didn't say what the testimony was.

8 Can you read back the question?

9 (Whereupon, the requested portion is
10 read back by the reporter.)

11 A I didn't backdate it. I just said The
12 Wave Private, Limited was struck off.

13 Q Okay.

14 So why -- why did you present this
15 document to -- this looks like a counselor
16 associate -- at the United States Embassy?

17 A Yes.

18 0 So why did you go there?

19 A Because I was told to have it notarized,
20 signed in front of Notary Public.

22 So this is just a notarized copy, is
23 that what this is?

24 A It's an assignment to be signed in front
25 of an authority.

1 corporate website for the Setai.

2 Q And what year is that; 2005?

3 A I mean, only this one, because we
4 created it, 2005. I mean, we finish the job in 2006.

5 Q Okay.

6 Were you aware in 2005 or 2006 of the
7 possibility of your photographs being used by the
8 hotels on the Internet for marketing purposes for the
9 hotels?

10 MR. TOKE: Calls for speculation.

11 A No, sir.

12 Q And you have not, prior to -- let me
13 rephrase that so it's English.

14 Prior to 2012, you did not go on the
15 Internet to look at the websites of any of the hotels
16 listed in paragraph ten?

17 A No. I didn't even know when GHM stopped
18 communicating with me. That would be about 2008.

19 Q What happened in 2008?

20 A My last meeting with Mr. Jenni, I picked
21 up -- I picked up paper carriers, packaging, amenity
22 boxes, match boxes, from the Nam Hai. They copied my
23 work for the Setai and the Lalu. I had never done
24 that work for the Nam Hai, so I made an appointment,
25 carrying all the pirated -- I would use pirated

1 copies. I made an appointment with Mr. Jenni. I
2 went to see him in hope that he can help me stop -- I
3 don't know who. The Nam Hai is using things that I
4 created for the Setai. The only change is -- the
5 only change is the logo. Okay?

6 So I went to see Mr. Jenni in hope that
7 he will help me address this. So when I saw him, I
8 said, "Mr. Jenni, I found all this at the Nam Hai,
9 and they had exact replicate of what I did for the
10 Setai, except I did not do this for the Nam Hai."

11 Q Okay. I don't -- what was the question?

12 MR. SCHWARTZ: Can you read back the
13 question?

14 (Whereupon, the requested portion is
15 read back by the reporter.)

16 A 2007 right?

17 MR. TOKE: He said 2008.

18 A Yeah, but the last time I met Mr. Jenni
19 was 2007.

20 Q In 2007, 2008, did you have a break with
21 GHM?

22 A I did not. I went to see -- that's what
23 I'm trying to tell you.

24 Q Okay. Who is Mr. Jenni?

25 A Ralph's boss.

1 record at 5 p.m.

2 Q Okay.

3 I have marked, as Exhibit 13, a document
4 entitled "Confirmation of Assignment of Copyright,"
5 which we're seeing for the first time today. This
6 document apparently was, according to the last page
7 of the document, was received by the Copyright Office
8 on May 20.

9 And what's today's date?

10 MR. TOKE: The 21st.

11 Q So it was received yesterday.

12 And, Ms. Lee, if you look at the second
13 page of this document, is that your signature on the
14 second page?

15 A Yes, sir.

16 Q And that is dated May 18, 2015?

17 A Yes, sir.

18 Q Okay.

19 And who prepared this document?

20 A Mr. John Jennison.

21 Q And where were you when you signed this?

22 A San Francisco.

23 Q Okay.

24 And why was this document created?

25 A Mr. Jennison told me it's confirmation

1 Do you see that?

2 A Yes.

3 Q It says, specifically, "Ms. Lee and GHM
4 entered into an agreement under which GHM would
5 arrange for Ms. Lee to photograph certain hotel
6 properties, and the hotels themselves would
7 compensate Ms. Lee for her work."

8 Now, that's not true, is it?

9 It's not true in the sense that there
10 wasn't one agreement?

17 Q Okay.

18 All right.

19 So if you look at paragraph 74 then, so
20 that says, "On or around August 2003, Ms. Lee
21 submitted her hotel photographs to GHM, as agreed."

22 What -- what happened in August 2003?

23 A No recollection.

24 Q So this is the amended complaint filed
25 on behalf of your company and it says on or around

1 | August -- August 2003, you submitted "her hotel
2 | photographs to GHM, as agreed."

3 Do you have any idea what that means?

4 A No, sir.

11 Q So that sentence has no particular
12 meaning. Can we agree on that?

13 A I cannot agree or disagree. I don't
14 know.

15 Q Okay.

16 So this is your complaint and you don't
17 know what that means?

18 A Because my attorney is supposed to know.

19 Q Okay.

22 So -- so -- let me see.

23 You had the assignment or the agreement
24 with Irieeyes and Masano where the both of you were
25 owning the copyright, that's what it said in the

1 C E R T I F I C A T E

2

3 I, RUTHANNE UNGERLEIDER, a Certified Court

4 Reporter and Notary Public, certify that the

5 foregoing is a true and accurate transcript of the

6 stenographic notes of the deposition of said witness

7 who was first duly sworn by me, on the date and

8 place hereinbefore set forth.

9 I FURTHER CERTIFY that I am neither

10 attorney, nor counsel for, nor related to or

11 employed by, any of the parties to the action in

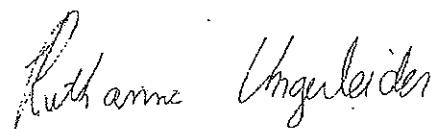
12 which this deposition was taken, and further that I

13 am not a relative or employee of any attorney or

14 counsel in this case, nor am I financially

15 interested in this case.

16

17 

18

19

20

21 RUTHANNE UNGERLEIDER, C.C.R., C.R.R.

22 LICENSE NO. XIO1634, XIO0115

23

24

25

[& - 3]

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[3 - agree]

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[transfer - use]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2014. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

Exhibit 2

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3 Civil Action No. 7:13-cv-09239

4 -----x

5 THE WAVE STUDIOS, LLC,
6 Plaintiff,

7 vs.
8 GENERAL HOTEL MANAGEMENT LTD., et al.,

9 Defendants.

10 -----x

11 One Chase Manhattan Plaza
12 New York, New York 10005

13 September 9, 2015
14 10:41 a.m.

15 CONTINUED DEPOSITION of LEE KAR YIN, on
16 behalf of THE WAVE STUDIOS, LLC, the
17 Plaintiff in the above-entitled action, held
18 at the above time and place, taken before
19 Jessica R. Taft, a Notary Public of the
20 State of New York, pursuant to Order and
21 stipulations between Counsel.

22

23 * * *

24

25 Job No. NJ2126707

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24 Frommer, Getaroom, Hotels.com, Hotelsbyme,
25 Hotelplanner, Insanelycheapflights.com,
JetBlue, Kayak, Lonely Planet, Metro travel
Guide, Metro Travel Guide, Netadvantage,
Partner Fusion, Inc., Reservation Counter
d/b/a ReservationCounter.com, Pegasus,
Random House d/b/a Foders.com, This Exit,
LLC-Roadside America, Travelocity,
Tripadvisor, United Airlines, Gogobot, Inc.
d/b/a gogobot.com, Qantas Airways, Ltd., WK
Travel, Inc., VFM Leonardo, Inc.
26 One Chase Manhattan Plaza, 39th Floor
27 New York, New York 10005

28 BY: MATTHEW J. VANDUSEN, ESQ.

29
30

1

2 STIPULATIONS

3

4

5 IT IS HEREBY STIPULATED AND AGREED by
6 and between the attorneys for the respective
7 parties hereto that the sealing, filing and
8 certification of the transcript of the
9 within examination before trial be, and the
same hereby are waived.

10

11 IT IS FURTHER STIPULATED AND AGREED
12 that said transcript may be signed and sworn
13 to before any Notary Public or Commissioner
14 of Deeds with the same force and effect as
15 if signed and sworn to before an officer of
16 this Court.

17

18 IT IS FURTHER STIPULATED AND AGREED
19 that all objections, except as to the form
20 of the questions, are reserved to the time
21 of the trial.

22

23

24

25

1 LEE KAR YIN

2 search on Google and then all these words
3 came out, all these words, and I just
4 clicked on any of the links.

5 Q What in your mind is the
6 connection between GHM and VFM?

7 A I have no idea. My first
8 question was, Where did VFM get all these
9 pictures from? And how can they put their
10 name on my pictures?

11 Q So, after you had that question
12 in your mind in 2012, "How did VFM get my
13 pictures?", what did you do?

14 A I went to find out who VFM is.

15 Q Did you notify VFM that they were
16 using your pictures in 2012?

17 A No.

18 Q Did you notify GHM that you thought
19 that VFM was using your pictures in 2012?

20 A No.

21 Q Why not?

22 A I think I answered that already
23 in my first deposition.

24 I have asked or rather pleaded
25 for unpaid bills to be paid for years. And

1 LEE KAR YIN

2 I was not -- not only was I ignored, the
3 final e-mail says, "It is none of our
4 business." Okay? Whatever Wave did with
5 whichever hotels, it is not GHM's
6 responsibility.

7 It is a fact, it is a fact that
8 GHM maintained even in Singapore court,
9 "Whatever bills to the hotels, please, go
10 get your payment from the hotels, not us.
11 It has nothing to do with us."

12 Okay. When I found in 2012, who
13 do I go to, because GHM already said, "It is
14 none of our business."

15 Q Okay. So, you have no idea of
16 any relationship between GHM and VFM?

17 A No.

18 Q No, that is correct, you have no idea?

19 A Yes, I have no idea.

20 Q Then the next, I think the next
21 paragraph describes a company called Pegasus
22 Solutions, if you look at number 12. If you
23 want to read that for a second, you can.

24 A Okay.

25 Q What is the relationship in your

1 LEE KAR YIN

2 mind between Pegasus and GHM?

3 A I do not know.

4 Q You have no idea?

5 A Yes, I have no idea.

6 Q If you would look at paragraph 76
7 on page 21, please.

8 MR. TOKE: Paragraph 76?

9 MR. SCHWARTZ: Yes.

10 MR. TOKE: Okay.

11 BY MR. SCHWARTZ:

12 Q You have read that?

13 A Read?

14 Q You have read it just now, right?

15 A Yes.

16 Q So, when each project was done, I
17 think you have already testified that you
18 would deliver a CD read only to --

19 A Memory.

20 Q -- read only memory, all right,
21 to GHM and the hotel that ordered it, correct?

22 A I said the CD ROM, read only
23 memory, was delivered to GHM and the general
24 manager of the hotel, whom -- I am not sure,
25 but whom also has at, let's say,

1 LEE KAR YIN

2 Q And so, the yellow tag shows that
3 Kayak is using a particular photograph that
4 is from one of your copyright registrations;
5 is that correct?

6 A That is correct.

7 Q Can you tell me, what is the
8 relationship between General Hotel
9 Management and that picture?

10 A I don't know. That is what discovery
11 is all about. I am trying to find out.

12 Q So, when you filed this
13 complaint, you had no idea of how Kayak got
14 a copy of that picture?

15 A All I know is these pictures,
16 Koichi doesn't have, Laden Thompson doesn't
17 have. They are not interested in these kind
18 of pictures. And Wave delivered, we only,
19 memory CD to GHM.

20 Q And the hotel manager, right?

21 A And the general manager.

22 Q So, as you sit here today, you
23 have no idea if GHM had any connection to
24 that picture appearing on Kayak.com?

25 A That is correct.

1 LEE KAR YIN

2 was if you found this on, let's say,
3 ABCD.com website, then you must know who is
4 the owner. So I went to WHOIS to see who is
5 the owner. And the owner is the registrant,
6 and the registrant is GHMHotels.com, GHM Hotels.

7 Q You went to WHOIS roughly at the
8 same time period, 2012, 2013?

9 A Yes, thereabouts.

10 Q Is there any other reason why you
11 didn't sue the hotels themselves?

12 A It is the owner of the site is
13 GHM. I sue GHM.

14 Q So the answer is there is no
15 other reason, that is the only reason?

16 A I would think so because they own
17 this and this is infringing.

18 Q And if you look at the next page
19 in Exhibit 16, what website is that?

20 A About.com.

21 Q And what connection does GHM have
22 to About.com?

23 A I do not have any idea.

24 Q So, would the same be true of all
25 exhibits through Exhibit 84 attached to your

1 C E R T I F I C A T E
2

3 STATE OF NEW YORK)

: SS

4 COUNTY OF NEW YORK)

5
6 I, JESSICA R. TAFT, a Shorthand
7 Reporter and Notary Public within and for
8 the State of New York do hereby certify:

9 That LEE KAR YIN, the witness
10 whose examination is herein before set
11 forth, was duly sworn by me and that this
12 transcript of such examination is a true
13 record of the testimony given by such
14 witness.

15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or marriage and that I am in no way
18 interested in the outcome of this matter.

19
20 IN WITNESS WHEREOF, I have hereunto set my
21 hand this 13th day of September 2015.

22 *Jessica R. Taft*
23

24 JESSICA R. TAFT

25 Commission Number 01TA6041411

Expires: 05/07/2018

[& - actual]

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Exhibit 3

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -
)
IN THE MATTER OF)
)
THE WAVE STUDIO, LLC, a New York)
Limited Liability Corporation,)
Plaintiff,)
)
) CASE NO:
v.) 7:13-cv-09239-CS-PED
)
GENERAL HOTEL MANAGEMENT LTD.,)
et al,)
Defendants.)
)
- - - - -

VIDEOTAPED DEPOSITION OF RALF OHLETZ GRAF VON PLETTENBERG

Wednesday, September 23, 2015
AT: 2:10 p.m.

Taken at:
Allen & Gledhill
31st Floor, 1 Marina Boulevard
Singapore 018989

Court Reporter:
Helen Case
Accredited Real-time Reporter

A P P E A R A N C E S

Appearing for the Plaintiff:

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Also present:

Ms. Lee Kar Yin

VIDEOGRAPHER:

Chee Meng Chen
Flex Video Productions

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15:15:30 1 A. Adriaan Zecha is a major shareholder of the
15:15:34 2 company, he owns 75 percent of GHM. So he represented his
15:15:36 3 interests. So, whether Kendall Oei reported to his wife or
15:15:40 4 his dog or him, I don't know, but he represented Adriaan
15:15:44 5 Zecha's interests. That's all I know.

15:15:48 6 Q. And what were Kendall Oei's responsibilities
15:15:53 7 at the company?

15:15:52 8 A. Kendall Oei is a banker by nature, an
15:15:56 9 investment banker, as a matter of fact, so he was involved
15:15:59 10 in all the legal issues, when it comes to contractual
15:16:02 11 issues, etc.

15:16:04 12 Q. So he did all the --

15:16:06 13 A. So he interacted -- he interacted more with
15:16:10 14 Hans Jenni than myself.

15:16:13 15 MR. TOKE: We can switch to the next.

15:16:16 16 MR. SCHWARZ: He has to switch the tapes.

15:16:20 17 A. Okay.

15:16:21 18 VIDEOGRAPHER: This marks the end of tape number 1
15:16:23 19 in the deposition of Ralf Ohletz.

15:16:26 20 Going off the record. The time is 3:16 p.m.

15:16:33 21 A. I think -- I'm not sure whether it's of any
15:16:34 22 relevance, but my name is not Ralf Ohletz, I have a full
15:16:38 23 name. So, just for the state record, right? Because --

15:16:40 24 MR. SCHWARZ: Okay. You can put that on, as soon
15:16:42 25 as we go back on the record.

15:31:34 1 manager.

15:31:35 2 Q. Or the general manager of the hotel?

15:31:37 3 A. Yes, because he would be the only one

15:31:40 4 authorized to authorize payment.

15:31:42 5 Q. Okay. Very good.

15:31:42 6 A. So if it's addressed to the financial

15:31:44 7 controler, the general manager would still sign it, because

15:31:47 8 he would still sign all checks --

15:31:50 9 Q. Okay.

15:31:50 10 A. -- countersigned together with the -- but an

15:31:52 11 order like this, because it has to fit into a budget, or

15:31:56 12 somehow has to go into a budget, it has to be explained to

15:31:59 13 the owners, would have to be signed by the general -- so

15:32:01 14 I don't know whose signature that is. I can't read it.

15:32:04 15 Q. Okay. And how would this order be placed,

15:32:13 16 meaning how would Junior know to send this to the Nam Hai?

15:32:20 17 Would you or someone in your department at GHM say, "Junior,

15:32:24 18 it turns out that the Nam Hai needs a logo replacement on

15:32:30 19 the Range Rover"?

15:32:31 20 A. Right.

15:32:31 21 Q. That's how it would happen?

15:32:33 22 A. Yes.

15:32:33 23 Q. Okay. So, you would contact Junior and say,

15:32:34 24 "Junior, the Nam Hai needs a logo replacement on the Range

15:32:40 25 Rover." She would then send --

15:32:40 1 A. I don't know whether it was a replacement or
15:32:42 2 whether it was a new logo, because when -- this was probably
15:32:45 3 the time when the hotel opened, so it had no logo, so it
15:32:49 4 needed a logo. So that would fall into her role of
15:32:51 5 responsibilities, yes.

15:32:52 6 Q. Okay. And so, then she would send this
15:32:53 7 production estimate to the hotel?

15:32:54 8 A. Yes.

15:32:55 9 Q. Would it go to you as well?

15:32:57 10 A. No.

15:32:57 11 Q. Okay.

15:32:57 12 A. Because I gave the instructions and then the
15:32:59 13 hotel has to sign it, because ultimately the hotel has to
15:33:03 14 pay for it.

15:33:04 15 Q. Right. And, as you said, the --

15:33:07 16 A. As long as we are in the budget. If there's
15:33:08 17 something that would not be in the budget, the hotel would
15:33:11 18 come back to me and say, "Sorry, we haven't got the money,"
15:33:16 19 whatever it is. They would come back to me. Other than
15:33:16 20 that, if it's all clear, it would not come back to me.

15:33:21 21 Q. Okay. So, you wouldn't have ever seen this
15:33:24 22 document?

15:33:24 23 A. No.

15:33:25 24 Q. Okay. Because the hotels were responsible --

15:33:27 25 A. It's a smaller --

15:33:27 1 Q. Hold on. Let me finish my question.

15:33:27 2 And that's because the hotels were responsible for

15:33:27 3 the charges for anything specific to the hotels?

15:33:30 4 A. Yes, and also it's a very small amount.

15:33:33 5 So ...

15:33:33 6 Q. Okay. So, if it was a bigger amount you would

15:33:37 7 probably see it?

15:33:38 8 A. No. As I said, if it's a bigger amount and

15:33:41 9 it's not in the budget then it would definitely be brought

15:33:46 10 to my attention, yes. Otherwise no.

15:33:49 11 Q. Let's mark this the next in order. This will

15:33:52 12 be exhibit 50.

15:33:55 13 (Exhibit 50 marked for identification)

15:34:14 14 And once you've read through the document, please

15:34:18 15 let me know when you're ready for me to ask questions about

15:34:23 16 it.

15:34:38 17 A. I have no questions.

15:34:39 18 Q. No, I said I have questions.

15:34:42 19 A. Sorry.

15:34:42 20 Q. I have questions, however.

15:34:44 21 A. I'm sorry.

15:34:44 22 Q. But you've read the document? You're --

15:34:45 23 A. I've read the document, yes.

15:34:47 24 Q. Okay. Very good. And so, this is another

15:34:48 25 production estimate. This is for the Chedi Club Tanah

15:38:27 1 A. No, the client is the Chedi Chiang Mai.

15:38:30 2 Q. Okay.

15:38:30 3 A. I mean, Eleanor Hardy represents the client,

15:38:33 4 being the general manager. But the client is the Chedi

15:38:37 5 Chiang Mai.

15:38:38 6 Q. Okay. Okay. That's great.

15:38:49 7 Now, you testified earlier, Junior would usually

15:38:54 8 send a bill at some point or an invoice?

15:38:56 9 A. Invoice, yes.

15:38:57 10 Q. So she would send an invoice that would

15:39:00 11 correspond to the production estimate; yes?

15:39:02 12 A. I assume, yes.

15:39:04 13 Q. So, you would have a production estimate for a

15:39:06 14 certain amount, she would provide the service or the

15:39:11 15 product, and then invoice -- issue an invoice after that;

15:39:17 16 correct?

15:39:17 17 A. Yes.

15:39:18 18 Q. And would a copy of that go to GHM?

15:39:21 19 A. I don't know. I've never seen a copy of it

15:39:26 20 because, as far as we are concerned is, or I'm concerned is,

15:39:28 21 I see an estimate and sometimes when the estimate is, let's

15:39:33 22 say, over the budget, people would negotiate with her,

15:39:37 23 meaning the general manager. Right? And I remember a few

15:39:42 24 instances at The Setai where a lot of things needed to be

15:39:46 25 done and, you know, it was negotiated with Junior. But Puri

15:39:50 1 did the negotiation.

15:39:51 2 So, once ultimately the order is approved, then

15:39:55 3 I don't see this any more because it is not -- it is then

15:39:59 4 between Junior and the hotel.

15:40:01 5 Q. So, essentially, once the production estimate

15:40:03 6 was looked at --

15:40:06 7 A. The production estimate I would see.

15:40:07 8 Q. Let me finish my question. Let me finish my

15:40:09 9 question. Okay?

15:40:13 10 Once the production estimate was sent to the

15:40:15 11 hotel, and potentially you, if it was outside the budget or

15:40:20 12 some other -- it was a larger amount, and it was approved,

15:40:24 13 Junior would do the work and then she would send an invoice

15:40:27 14 to the hotel?

15:40:28 15 A. Yes. But it's not quite like that. When an

15:40:32 16 order is given, we talked about whatever, a production

15:40:36 17 estimate comes to us and the hotel, i.e. to my desk. I make

15:40:41 18 sure that -- the estimate is one thing, but also that the

15:40:46 19 description here, where she describes what she needs to

15:40:49 20 do -- brochure, doing this, doing that, supervision -- that

15:40:52 21 this is what we have discussed.

15:40:54 22 Q. Okay. So, let me understand that. So, when

15:40:57 23 an order is given, you contacted Junior, she sends a

15:41:00 24 production estimate to the hotel, as well as to your desk?

15:41:02 25 A. Right.

15:41:03 1 Q. You both review it and then, once it's
15:41:06 2 approved by you and the hotel, she does the work?
15:41:09 3 A. Yes.
15:41:09 4 Q. And then she invoices the hotel?
15:41:13 5 A. Correct.
15:41:14 6 Q. And the hotel pays it?
15:41:15 7 A. Correct.
15:41:16 8 Q. Would you see a copy of the invoice?
15:41:18 9 A. No.
15:41:20 10 Q. Okay.
15:41:20 11 A. There's no need because the approval was
15:41:21 12 already given.
15:41:22 13 Q. Okay.
15:41:22 14 A. Unless, as I said, as I stated earlier on,
15:41:25 15 unless in this case perhaps there's no money available or
15:41:29 16 it's not in the budget or it's an extraordinary something,
15:41:34 17 then it comes back to me, I have to countersign.
15:41:37 18 Q. Okay. And when you said "this", you're
15:41:39 19 referring to exhibit 50?
15:41:40 20 A. That's right, to this one, yes.
15:41:41 21 Q. Okay.
15:41:41 22 A. Because the general manager is not authorized
15:41:43 23 to sign anything out of his jurisdiction above the budget.
15:41:46 24 So that approval has to come from me.
15:41:52 25 Q. Okay.

15:42:20 1 So, we talked about how some -- the concept was
15:42:25 2 that Wave, for each of the properties, or Junior, would
15:42:30 3 conduct a photo shoot of each of the hotels on a number of
15:42:33 4 occasions to gather photos to be used in various collateral
15:42:37 5 that GHM would put an order in for. Is that accurate?
15:42:41 6 A. No, because she didn't conduct a photo shoot.
15:42:44 7 Junior was part of a team that conducted a photo shoot.
15:42:47 8 Q. Okay.
15:42:48 9 A. There was a photographer, there was the
15:42:50 10 assistant photographer, in some cases there was myself, and
15:42:52 11 there was also an assistant from the hotel, buying props,
15:42:57 12 buying this, buying that. So she was part of that team.
15:43:01 13 Q. Okay.
15:43:02 14 A. It was not Junior Lee who conducted that.
15:43:03 15 Q. I see. Okay.
15:43:04 16 A. She supervised everything, because that was
15:43:06 17 the deal, but she didn't conduct it. It was conducted by
15:43:11 18 various individuals.
15:43:13 19 Q. Okay. I understand. So you're telling me
15:43:17 20 that she supervised the photo shoots?
15:43:20 21 A. Correct.
15:43:20 22 Q. And so can you explain to me what that would
15:43:24 23 mean to you, by "supervised", what would --
15:43:26 24 A. It means, you know, they go two days before,
15:43:29 25 the whole team. Right? And they look at what flowers are

15:46:49 1 A. The photographer was not her lapdog. The
15:46:53 2 photographer is a very well known photographer, which I'm
15:46:56 3 working with now for the past three years and, you know, he
15:46:59 4 has his own mind. Because ultimately if the photos are no
15:47:03 5 good, we will go back to her and say, "What the hell is
15:47:06 6 this?" She is not taking the photographs, the photographer
15:47:09 7 is taking the photographs. So it was a joint effort between
15:47:13 8 her and the photographer and me looking -- looking at the
15:47:16 9 Polaroid shots.

15:47:17 10 Q. Okay. And so, nonetheless -- so, Junior would
15:47:33 11 issue a production estimate for going and doing a photo
15:47:38 12 shoot at a particular property; correct?

15:47:40 13 A. Yes.

15:47:41 14 Q. Okay. So let's use this as an example. This
15:47:46 15 will be marked as the next in order.

15:48:05 16 COURT REPORTER: Fifty-two.

15:48:09 17 (Exhibit 52 marked for identification)

15:48:09 18 BY MR. TOKE:

15:48:15 19 Q. This might be for an example of a photography
15:48:20 20 estimate; correct?

15:48:23 21 A. Mm-hm. Yes.

15:48:24 22 Q. Okay. It says "Photography", it is dated
15:48:27 23 3 May 2004, and it says:

15:48:30 24 "Photography, Photo Art Direction and Supervision
15:48:32 25 including Digital Processing Charges for 5 days'

16:04:12 1 job to Junior; correct?

16:04:15 2 A. Hm-mm.

16:04:17 3 Q. So, for all of these photo shoots for all of

16:04:19 4 the hotels managed by GHM for whom Wave provided some

16:04:23 5 photography services, you would give Junior the job;

16:04:25 6 correct?

16:04:26 7 A. Yes.

16:04:27 8 Q. And you testified then that the production

16:04:28 9 estimate would go one copy to the hotel, one copy to you in

16:04:32 10 all of these instances?

16:04:34 11 A. Correct.

16:04:34 12 Q. Okay. And then once you and the hotel had

16:04:36 13 approved it then Junior would do the photo shoot and --

16:04:40 14 A. No, I didn't approve anything. I made sure

16:04:43 15 that what was in the estimate is what the hotel needed of

16:04:47 16 her services.

16:04:48 17 Q. Okay. And that's because the contracting

16:04:51 18 parties, really, were the hotel who was paying for it and

16:04:54 19 Junior; correct?

16:04:55 20 A. Correct.

16:04:56 21 Q. Okay. So, let's take a look at the language

16:05:00 22 at the bottom of page 53 -- exhibit 53. There are two I'd

16:05:06 23 like you to look at. The first one is the very last bullet

16:05:12 24 point at the bottom.

16:05:16 25 A. There's an arrow here. I can't read it but

16:16:58 1 Do you see that?

16:16:58 2 A. Mm-hm.

16:16:59 3 Q. This would be contrary to the viewpoint that

16:17:00 4 the hotels were the copyright owner; correct?

16:17:04 5 A. Well, The Setai Club was a total different

16:17:07 6 entity. I don't know, because it's very disjointed here,

16:17:12 7 you are putting things together here. I don't know in what

16:17:15 8 context it is. But, yes, I read what it says, yes.

16:17:18 9 Q. So, it does seem contradictory to the

16:17:22 10 viewpoint that the hotels were the owner of the photographs

16:17:25 11 taken; correct?

16:17:25 12 A. The Setai Club is not the hotel. The Setai

16:17:27 13 Club was a different entity of the hotel.

16:17:31 14 Q. Okay. But there was a -- understood. But

16:17:32 15 there were photos taken by Wave, or Junior, of the Setai

16:17:35 16 Club; correct?

16:17:38 17 A. This I don't know.

16:17:39 18 Q. Okay. Okay. But you would agree that this

16:17:42 19 seems to suggest --

16:17:43 20 A. No, I wouldn't agree. Because The Setai Club,

16:17:46 21 as I said, and repeat myself, is a different entity. The

16:17:49 22 Setai Club is nothing to do with the hotel. The Setai Club

16:17:53 23 is a private membership club located in the hotel. It's a

16:17:58 24 separate ownership.

16:17:59 25 Q. Okay.

16:17:59 1 A. And it was not --

16:17:59 2 Q. And it was not managed by GHM?

16:18:01 3 A. No, of course not.

16:18:02 4 Q. Okay. So, that would suggest -- and you're

16:18:03 5 not aware -- were you at The Setai Club shoots, The Setai

16:18:07 6 shoots?

16:18:07 7 A. I don't know. This I don't know. I can't

16:18:09 8 remember, it's so long ago.

16:18:11 9 Q. Okay. So, you don't recall?

16:18:13 10 A. We're talking about 10 years here. Now

16:18:14 11 I can't remember if I was there.

16:18:16 12 Q. So, you don't recall if you were at The Setai

16:18:19 13 for any of the photo shoots?

16:18:20 14 A. I was at The Setai, yes.

16:18:22 15 Q. Okay.

16:18:22 16 A. I was at The Setai photo shoots. This

16:18:24 17 I remember because I remember the big hoo-ha we had to pay

16:18:27 18 to get Junior Lee's luggage out of the thing. I remember

16:18:31 19 that very well because we had to pay extra money to bring

16:18:36 20 all these equipment into the country. So, I was there,

16:18:38 21 right.

16:18:38 22 I can't remember the photo shoot of The Setai

16:18:40 23 Club. That was a club which was done by The Setai

16:18:46 24 developer. We did the cleaning and this and that but they

16:18:49 25 sold the memberships. It was a membership club, a private

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17:19:20 1 Q. Okay. Thank you.

17:19:22 2 FURTHER EXAMINATION BY MR. SCHWARZ:

17:19:23 3 Q. Is Mr. Oei a lawyer, to your knowledge?

17:19:25 4 A. He's not a lawyer, no. He is a banker. But

17:19:29 5 because he was representing the major shareholder of the

17:19:32 6 company, obviously he needs to keep an eye on what's going

17:19:35 7 on. But for all the legal work that GHM needed, we had

17:19:39 8 lawyers, a law office. The contract was never drafted up by

17:19:45 9 Kendall or anybody. So it was -- but he had a copy of it,

17:19:49 10 so he had knowledge of that.

17:19:52 11 Q. And do you have any knowledge of what Kendall

17:19:54 12 Oei's background in intellectual property law is?

17:19:59 13 A. No.

17:20:01 14 Q. Okay. I have no further questions.

17:20:06 15 MR. TOKE: Great. Thank you so much for your

17:20:08 16 time.

17:20:09 17 A. Thank you.

17:20:10 18 VIDEOGRAPHER: This marks the end of tape number 3

17:20:15 19 in the deposition of Ralf Ohletz Count von Plettenberg.

17:20:19 20 Going off the record. The time is 5:20 p.m.

17:20:28 21 (5:20 p.m.)

17:20:33 22 (Whereupon the deposition concluded)

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24

25